IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10211 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GSRTC

Versus

PARSINHBHAI MALABHAI RATHOD

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Appearance:

1. Special Civil Application No. 10211 of 1998

MRS VASAVDATTA BHATT for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

SERVED BY AFFIX.-(R) for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/01/2004

ORAL JUDGEMENT

1. The Gujarat State Road Transport Corporation has filed this petition challenging the award made by the Labour Court, Vadodara in Reference (LCV) No. 390/1996

dated 15th April, 1998, whereby the petitioner has been directed to reinstate the respondent on his original post with continuity of service and payment of 25% back wages.

2. It appears that the respondent at the relevant time was discharging duty as the Conductor at Vadodara. He was alleged of remaining absent without leave for different periods during the year 1994 i.e. between 26th June, 1994 to 11th July, 1994, 17th July, 1994 to 31st July, 1994, 6th August, 1994 to 11th August, 1994 and lastly on 14th August, 1994 to 23rd August, 1994. In view of the same he was subjected to departmental inquiry and he was found guilty of committing the misconduct of remaining unauthorisedly absent for the aforesaid period. In view of the finding arrived at by the Inquiry Officer, order of dismissal was passed against him on 28th December, 1994. Since his request to take him back in employment was turned down by the petitioner, he raised the dispute which was ultimately referred to the Labour Court under the provisions of section 10(1)(c) of the Industrial Disputes Act (for short 'I.D. Act').

3. Before the Labour Court it was averred by the respondent that he had remained absent during the aforesaid periods because he was confined to bed due to serious illness. it was further averred that this fact was brought to the notice of the concerned officer i.e. the Depot Manager, but since the petitioner was the active member of the workers' union, he had, with malafide intention, passed order of dismissal. He had further submitted that the inquiry was held ex-parte and he was not given any opportunity to defend his interest. He, therefore, submitted that the order of dismissal was passed against the principles of natural justice and without following the due procedure of law.

3.1. The claim of the respondent was contested by the petitioner by filing reply at Exh. 7. According to it, the respondent had committed grave misconduct as he had remained absent without leave for the aforesaid periods. It was further contended that the respondent was totally indifferent to his duty and was in the habit of remaining unauthorisedly absent. Such defaults on the part of the respondent had caused tremendous inconvenience to the persons availing the transport service of the petitioner. It was further contended that despite the registered notice to report for duty, the respondent had not reported for duty nor he had submitted any reason for not reporting for the duty. Lastly it was contended that the respondent was guilty of committing various types of acts of misconduct and there were 25 such entries in his

statement of offences. It was contended that the reference was required to be dismissed.

4. The Labour Court, on the strength of the material produced before it, came to the conclusion that considering the nature of the alleged act of misconduct, the penalty imposed upon the respondent was very harsh requiring its interference under the provisions of section 11-A of the I.D. Act. In the opinion of the Labour Court, the act of misconduct which was held to be proved was not that grave so as to warrant imposition of penalty of dismissal from the service which amounted to causing his economic death. The Labour Court, therefore, on the question of punishment interferred with the order of dismissal passed by the concerned authority and quashed and set it aside and directed reinstatement with 25% back wages.

5. Mrs. Vasavdatta Bhatt, learned advocate appearing for the petitioner has submitted that the conclusion drawn by the Labour Court was absolutely erroneous in view of the fact that the respondent was a habitual offender and he was guilty of committing not less than 25 offences. She has further submitted that out of the aforesaid 25 offences, there were several acts of unauthorised absenteeism. Even on the present occasion he had remained absent at regular interval during the period between 26th June, 1994 and 23rd August, 1994. According to her, the order of dismissal passed by the concerned authority was absolutely legal, just and proper and did not call for any interference at the hands of the Labour Court. She has further submitted that presuming that the order of dismissal passed against respondent was very harsh, then also the Labour Court ought to have imposed some punishment to teach a lesson to the respondent.

5.1. As against that, Mr. M.H. Rathod, learned advocate appearing for the respondent has supported the judgment and award and has submitted that this Court may not interfere with the decision of the Labour Court and the petition be dismissed.

6. Having considered the rival submissions and after perusing the record of this petition, it appears that the respondent who worked as a Conductor at the relevant point of time had remained absent between 26th June, 1994 and 23rd August, 1994 at regular interval, details of which have already been narrated above. It also appears that he had remained absent without obtaining leave of the concerned authority and despite the notice he had not

resumed the duty. However, in the opinion of the Labour Court the punishment imposed by the Disciplinary Authority was very harsh. It, therefore, thought it fit to interfere with it while exercising power under section 11-A of the I.D. Act. By now it is a well settled principle of law that the judicial review of the impugned decision u/S. 11-A of the I.D. Act is very limited. When the Labour Court has exercised that power and has come to the conclusion to the effect that the penalty imposed by the Disciplinary Authority was grossly disproportionate to the gravity of the act of misconduct alleged, it is not now proper for this Court under Article 227 of the Constitution of India to reappreciate the material on record and to review the decision of the Labour Court on the quantum of penalty. This would be more so because by virtue of the decision of the Labour Court the respondent has been reinstated in the service by the Department on his original post with effect from 18th November, 1998. It will now not be proper for this Court after period of five years to disturb the respondent from his service and to send him home. With the decision of the Labour Court and also with the passage of time, the equities have now turned in favour of the respondent.

7. I am, therefore, of the opinion that the Labour Court's direction of reinstatement is not required to be disturbed. However, so far the question of payment of back wages is concerned, it certainly requires interference by this Court since no just or proper reason has been assigned by the Labour Court even for granting 25% of back wages to the respondent. In fact the respondent had been remaining absent without obtaining prior leave of the concerned authority and thereby he was causing monetary loss. Ultimately when the Department got totally exhausted of the misbehaviour of the respondent, it was constrained to terminate his services. When this is so and when there is no proper reason assigned by the Labour Court for award of 25% of back wages, in my opinion, that part of the Labour Court's direction is required to be quashed and set aside and it is ordered to be quashed and set aside. Since by virtue of the stay granted by this Court the petitioner has not paid the said amount of 25% of the back wages, it is now made clear that the petitioner will not be required to pay the same to the respondent.

The result is that the petition is partly allowed. Rule made absolute to the aforesaid extent with no order as to costs.

[ AKSHAY H. MEHTA, J.]

* Pansala.